

BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA

FILED

NOV 19 1951

Board of Tax Appeals  
for the  
District of Columbia

PETER W. CONNELL,

Petitioner,

v.

DISTRICT OF COLUMBIA,

Respondent.

DOCKET NO. 1267

MEMORANDUM

As stated in the Findings, the only issue involved relates to so much of the assessments as were based on the Assessor's computation of petitioner's sales of draft beer.

The Assessor's computations were based on the use of 7-ounce glasses by petitioner in dispensing draft beer. Petitioner testified that during the period beginning in August, 1949 and ending in October, 1950, he used 9-ounce glasses, that from October, 1950 until January, 1951, he used 8-ounce glasses, and that he did not use 7-ounce glasses until the beginning of January, 1951. However, the evidence on that point was far from sufficient to sustain the burden of proof resting on petitioner. There was testimony that when the investigators for the Sales Tax Division first visited petitioner's place of business on or about February 5, 1951, he was asked about the size of the glasses and he replied that he used 7-ounce glasses. Petitioner testified that if he did say that he used 7-ounce glasses, he was referring to the glasses he used at the time of the interview. However, he knew that the interview was an investigation not of sales being made at the time of the interview, but of sales which had been made during the preceding period which had ended on January 31, 1951.

After the interview of February 5, 1951, a conference took place with petitioner in the Assessor's office in April, and it was then

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expressly stated that there was involved the size of glasses used through the 18-months period ended January 31, 1951. He was then requested to furnish an affidavit or some kind of evidence that he had owned or used larger than 7-ounce glasses, but he did not furnish such evidence. Later one of the investigators called at his place of business and the matter of the size of his glasses was again brought up, and petitioner stated that he had some of the 9-ounce glasses at home which the investigator could see if he went to petitioner's home. He did not offer to bring any of them to his place of business or to the Assessor's office, made no attempt to offer them for the view of the investigator, and did not produce any at the hearing.


He testified that he had given his sister two or three dozen of the 9-ounce glasses. The sister did not testify. Although the sister had five small children, it seems likely that some of the glasses would have survived the year between October, 1950 and the day of the hearing on October 31, 1950 and in any event, no reason was shown for the non-appearance of the sister or any member of her family as a witness.

Furthermore, although petitioner had waitresses, and presumably other employees, none of them were produced as witnesses nor were any of the customers who consumed the 600 half-barrels of beer.

Petitioner testified that he bought the 7-ounce glasses from a man whom he knew only as "John" and whose last name and address he did not know, and from whom he stated he bought for cash. Although petitioner kept daily records of his receipts and disbursements, and his accountant testified that he showed purchases of glasses, silverware, pots and pans under the heading "Replacements" in these records, the evidence did not point to any such entries. Petitioner testified that the wholesale price of beer went up in October and that that accounted for the reduction in the size of his glasses from 9 ounces to 8 ounces at about that time and that about the end of 1950 he was apprehensive that a ceiling might be put on the price of beer and he did not want to

be caught with an unfavorable ceiling. These may have been good reasons for reducing the size of the glasses, but are not sufficient to justify a finding to the effect that they brought about that result, in the absence of satisfactory evidence of that fact.

Petitioner having failed to overcome the presumption of the correctness of the assessments appealed from, they will be affirmed.

  
Lawrence Koenigsberger,  
Member Sole,  
Board of Tax Appeals for  
the District of Columbia

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PETER W. CONNELL,  
Petitioner,  
v.  
DISTRICT OF COLUMBIA,  
Respondent.

Docket No. 1267

Appeal from deficiency assessments of sales taxes for the period August 1, 1949 to January 31, 1951.

FINDINGS OF FACT and CONCLUSIONS OF LAW

Findings of Fact

1. During the months of August, 1949 to and including January, 1951, petitioner, Peter W. Connell, was the owner and operator of a restaurant known as the Harvard Grill. In the operation of that business he sold draft beer, bottled beer, other beverages and food.

2. He filed sales-tax returns for the months of August, 1949 to and including January, 1951. These returns showed total sales subject to sales tax amounting to \$33,105.44, and taxes due thereon totaling \$662.13, which taxes were paid by petitioner with the returns. Thereafter representatives of the Assessor's office, upon an audit and investigation covering that period, determined that petitioner's total sales subject to tax amounted to \$47,853.51, and on May 22, 1951, made a deficiency assessment of \$297.48, plus penalties amounting to \$14.89, in addition to the amounts previously paid by petitioner. On June 26, 1951, under protest in writing, petitioner paid the tax and penalties, plus \$31.24 interest, a total of \$343.61, and on September 24, 1951, appealed to this Board from the assessment.

3. At the hearing, no evidence was offered in support of so much of the appeal as was based on additional assessments with respect to sales of merchandise other than draft beer.

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4. Petitioner sold draft beer at ten cents per glass. The draft beer sold by petitioner had been bought by him in half-barrels of 1,984 ounces capacity each. During the period involved, petitioner purchased 600 half-barrels of draft beer. He dispensed the draft beer in 7-ounce glasses, which contained slightly less than 7 ounces of beer due to the foam which formed in the process of filling the glasses. There was some waste due to spillage in the process of pouring. Approximately 290 sales of beer in 7-ounce glasses can be made from each half-barrel of beer. On this basis, petitioner sold 174,000 glasses of draft beer during the period involved, for a total of \$17,400, which is the amount upon which the Assessor based so much of the additional assessment as he found to be owing by reason of petitioner's sales of draft beer.

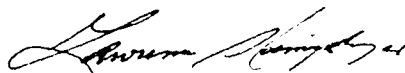
5. During the hearing certain exhibits offered by petitioner were received in evidence. At the conclusion of the hearing they were temporarily withdrawn by petitioner, subject to being returned by November 15. The exhibits not having been returned, although the date for their return has passed, it is assumed that they have been abandoned, and they have not been considered in the formulation of the Findings of Fact and Conclusion of Law.

6. The additional assessments, insofar as they were based on petitioner's sales of draft beer, were correct. There is no issue with regard to the remainder of the additional assessment.

Conclusion of Law

The assessments appealed from should be affirmed.

Decision will be entered for respondent.



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Petitioner having failed to overcome the presumption of the correctness of the assessments appealed from, they will be affirmed.

  
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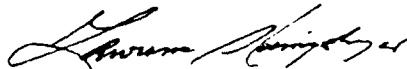
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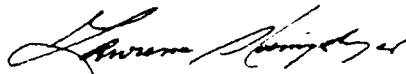
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